IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 289 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PARWATIBEN ANKUSHBHAI - Appellant(s)
Versus
RAJESH JUGRAJ BANTHIA & 2 - Defendant(s)

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Appearance :
MR GOVIND V PATEL for Appellant(s) : 1,
MS NIYATI K SHAH for Defendant(s) : 1,
MR.D K.PUJ for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 06/09/2005

ORAL JUDGMENT

1. This Appeal from Order came to be filed by original defendant No.3 against an order passed by the learned Auxiliary Chamber Judge – 1, City Civil Court No.19, Ahmedabad on 6th July, 2005 below Exhibits 31, 32, 36, 37, 40 and 41 in Civil Suit No.2015 of 1997.

2. The brief facts may be stated that respondent No.1 herein Rajesh Jugraj Banthis filed a Civil Suit No.2015 of 1997 in the City Civil Court, Ahmedabad against the present appellant and respondents No.2 and 3, for possession of Flat No.B/14 situated in Dharma-Jyot Co-operative Housing Society Limited, Near Swaminarayan Tula Smarak, Maninagar, Ahmedabad. It was the case of the plaintiff that he paid Rs.1,47,000/- and obtained the possession of the said property in 1994 and, thereafter, while he was out of Ahmedabad, defendants entered into the said

suit property by breaking the lock applied to the Flat and committed trespass. The plaintiff, therefore, having filed above suit for possession also, preferred notice of motion of interim injunction at Exhs.5 and 6 for the vacant possession of the said Flat, during the pendency of the suit. Though notice of motion and the suit, summons were duly served upon the defendants including the present appellant, none appeared and hence below Exhs.5 and 6, an ex-parte mandatory order came to be passed by the trial Court on 10th January, 2003. Thereafter, the present appellant preferred an application for setting aside the said mandatory injunction under Order 39, Rule 4 and for allowing her to file written statement in the suit as well as to reply to the notice of motion. At the same time, the present respondent No.1 i.e. original plaintiff also preferred an application for appointment of receiver to

take the vacant possession of the suit property under Order 40, Rule 1(b) of the Civil Procedure Code in pursuance of interim mandatory injunction granted by the trial Court. Though the present respondents No.2 and 3 i.e. Original defendants No.1 and 2 did not choose to appear in the said suit or any of the notices of motion, while it was the case of the present appellant before the trial Court that on service of summons of the suit and notice of motion, she contacted the defendant No.1 her employer and proprietor of M/s.Sagar Petrol Pumps (India) Limited, where she was working, who assured that he would deal with the suit and not to worry about it. The fact also disclosed before the Court that the defendant No.1 – Jigneshkumar Kirtanlal Shah filed H.R.P. Suit No.824 of 1995 in the Small Causes Court, Ahmedabad against the original defendant No.2 – Dhirajlal Somalal Shah in respect of the suit property

contending that defendant No.2 was a tenant of the property and that defendant No.1 was the owner of the property. But the plaintiff – Rajesh Jugraj Banthis joined as party in the said suit and Small Causes Court vacated the ad-interim relief granted, an Appeal from Order filed against the said order also came to be dismissed by the Appellate Bench of Small Causes Court.

3. In the above backdrop of facts, it was vehemently urged by learned advocate Mr.G.V.Patel for the appellant that in fact, the appellant was employer of one M/s.Sagar Petrol Pumps (India) Limited and was inducted in the premises by one Rambhai and on his assurance, she did not appear before the City Civil Court in the suit or notice of motion. It is stated that if she is dispossess, she is likely to suffer greater hardship and that since the suit is pending, she is entitled to reasonable opportunity to defend the suit as

well as notice of motion by which ex-parte mandatory injunction is granted, so as to make out her case. It is also stated that the present appellant would undertake to assure the co-operation in the disposal of the suit expeditiously and in the meanwhile, she may not be dispossessed. It is also submitted that there are contentions in favour of the present appellant like whether the suit is filed within the period of limitation and there are grounds to challenge the documents like receipts produced before the Trial Court and other documents in respect of ownership of plaintiff, and, therefore, also the appellant be granted an opportunity to defend the suit after vacating interim mandatory injunction. It is also further submitted that the order passed by the trial Court for appointment of receiver by the City Civil Court under Order – 40, Rule-1 is also not proper as there were no reasonable grounds to

allow such notice of motion in favour of the original plaintiff. It is, therefore, stated that after admitting this appeal, interim relief be granted to the appellant as prayed for.

4. Though no notices were issued in this appeal, when it is placed for admission, but learned advocate Mr.D.K.Puj appears for respondent No.1 original plaintiff perhaps on advance copy served. He was heard.

5. Going through the record and the orders impugned in this Appeal from Order, it clearly appears that merely because appellant occupies the suit property without any legal entitlements, she cannot be granted an opportunity to continue in possession till final disposal of the suit. Learned trial Judge, after going through the record, came to the right conclusion that there was no legal basis or even iota of evidence on record to infer that either original

defendants No.1 and 2 became entitled to have possession of the suit property through which or through may be some third party, the present appellant claims possession. There is nothing on the record except bare statements of the appellant that she being an employee granted the possession of the said flat by her employer. It is an established rule of law that no trespasser can be protected without any legitimate and legal right to occupy the property, when there is an evidence on record that the plaintiff was the owner of the suit property and neither defendant No.1 nor No.2 appeared before the Court to answer the suit claim. The learned trial Judge, therefore, rightly rejected the notice of motions Exhs.36 and 37 as well Exh.40 filed by the present appellant and the chamber summons filed by the plaintiff for appointment of receiver is rightly granted by the trial Court. The order impugned in this

Appeal from Order, therefore, cannot be interfered with on the grounds urged on behalf of the appellant. The documents produced on record, especially receipts will be appreciated at the stage of recording of the evidence, but merely alleging that the said receipts appearing to have been written at the same time, cannot gain any ground in favour of the appellant at this stage.

6. In view of the above matter, this Appeal from Order stands dismissed summarily.

[J. R. VORA,J.]

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